

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 90 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/- and

MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy No :  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

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NATIONAL INSURANCE CO.

Versus

G V BHARVAD  
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Appearance:

MR SUNIL B PARIKH for Petitioners

NOTICE SERVED for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

Date of decision: 02/02/2000

ORAL JUDGEMENT

(Per : Srivastava, J.)

1. The Judgment and Award dated 29.4.1985 of the Motor Accident Claims Tribunal, Rajkot is under challenge in this Appeal. Notice of this Appeal has been served on all the ten respondents, but none has appeared on their behalf. As such Shri Sunil B. Parikh for the appellant has been heard and the Award under challenge has been

examined.

2. Brief facts giving rise to this Appeal are that on 2.7.1983 at about 2.00 p.m. accident took place near S.T. Workshop where deceased minor Raghu Govind received fatal blow from ambassador car driven by the opposite party No.1 before the Tribunal and owned by opposite party No.2 and the vehicle was insured with opposite No.3 before the Tribunal. Injured died on the same day at about 10.00 p.m. in the hospital. It was alleged that the accident took place on account of rash and negligent driving of the car by the opposite party No.1. Compensation of Rs.1 lac was claimed by the claimant and Rs.25,000/- was claimed on account of funeral and obsequial ceremony. In this way total compensation of Rs.1,25,000/- was claimed.

3. The Insurance Company denied the careless and negligence on the part of the driver in driving the vehicle.

4. The driver also in his written statement denied that the accident occurred on account of his rash and negligent driving. On the other hand he explained that he was driving the vehicle cautiously, but the deceased suddenly attempted to cross the road with a view to join his two sisters and in this process he was hit by the vehicle driven by opposite party No.1. Plea of contributory negligence was also raised by the opposite party Nos.1 & 2.

5. The Tribunal found that the accident took place on account of rash and negligent driving of the car by the opposite party No.1, namely, the driver. The Tribunal repelled the defence plea that the deceased was guilty of contributory negligence. The Tribunal further found that the opposite parties Nos. 2 & 3 are vicariously liable to pay compensation. According to the Tribunal the claimants were entitled to net compensation of Rs.60,000/-.

6. In the course of hearing of this Appeal learned Counsel for the appellant did not challenge the findings of the Tribunal on Issues No.1,2 & 3. Consequently these findings have to be maintained.

7. Learned Counsel for the appellant has challenged the finding of the Tribunal on the quantum of compensation. According to the learned Counsel, the compensation awarded is excessive. However, considering the facts and circumstances of the case and the evidence on record we are unable to accept the contention that the

compensation awarded by the Tribunal is in any way excessive. It was stated from the side of the claimant that the deceased was earning Rs.10/- per day as waiter in some tea cabin. Initially he was getting Rs.7/- per day from the above job and thereafter he started earning Rs.10/- per day. It is also stated that the deceased used to earn Rs.2 to 3 per day by collecting fire wood and dung cakes. There was no evidence in rebuttal. On mere presumption it could not be said that because the deceased was engaged as waiter between 8.00 a.m. to 6.00 p.m. he could not have collected fire wood or dung cakes. Thus, if the deceased was earning Rs.13/- per day the total monthly income could have been about Rs.390/per month. The Tribunal assessed monthly income at Rs.400/in round figure which does not seem to be excessive. Out of this amount the Tribunal awarded Rs.100/- per month as personal expense of the deceased and Rs.300/- per month were taken as dependency for the blind father of the deceased and one blind brother of the deceased beside other eight dependents. If the father of the deceased was blind naturally he could not have earned anything so also one of the blind brothers. The mother could not have supported eight family members. As such if dependency to the claimants was assessed at Rs.300/- p.m. it does not suffer from any error on the higher side. Multiplier by 15 years was adopted and in this way Rs.54,000/- was assessed as compensation payable to the claimant. Over this amount Rs.5000/- was awarded as conventional compensation for loss of expectation of life and Rs.1000/- for medical expenses conveyance and funeral ceremony. In this way a sum of Rs.60,000/- does not, in any way, appear to be excessive. We are, therefore, not inclined to reduce this amount or interfere with the findings, of the Tribunal, in question.

8. No other point was urged. We are not inclined to interfere with the findings recorded by the Tribunal.

9. In the result the Appeal is hereby dismissed. No order as to costs.

sd/-

( D. C. Srivastava, J. )

Date : February 02, 2000 sd/-

( H. K. Rathod, J. )

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